

Jenlist Pty Ltd T/A Jenlist Distributors – Terms & Conditions of Trade

1.	Definitions				
1.1	"Agent" shall mean Jenlist Pty Ltd T/A Jenlist Distributors, its successors and assigns or any person acting on behalf of and with the authority of Jenlist Pty Ltd T/A Jenlist Distributors.	any of them to the Agent. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and	13.	Security And Change	Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
1.2	"Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.	(c) the Agent shall have the right of stopping the Goods in transit whether or not delivery has been made; and	13.1	(a)	where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
1.3	"Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.	(d) if the Customer fails to return the Goods to the Agent then the Agent or the Agent's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and		(b)	should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
1.4	"Goods" shall mean Goods supplied by the Agent to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Agent to the Customer	(e) the Customer is only a bailee of the Goods and until such time as the Agent has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Agent; and		(c)	the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
1.5	"Services" shall mean all services supplied by the Agent to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).	(f) the Customer shall not deal with the money of the Agent in any way which may be adverse to the Agent; and			
1.6	"Price" shall mean the cost of the Goods as agreed between the Agent and the Customer subject to clause 3 of this contract.	(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Agent; and			
2.	Acceptance	(h) the Agent can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and			
2.1	Any instructions received by the Agent from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.	(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Agent will be the owner of the end products.			
2.2	Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.		7.	Customer's Disclaimer	14.
2.3	Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Agent.		7.1	The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Agent and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.	14.1
2.4	The Customer undertakes to give the Agent at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.				14.2
2.5	Where the Goods supplied are:		8.	Defects	14.2
	(a) Optus pre-paid Goods; or		8.1	The Customer shall inspect the Goods on delivery and shall within seven (7) days notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Customer is entitled to reject, the Agent's liability is limited to replacing the Goods. Goods will not be accepted for return other than in accordance with 8.1 above and 9.1 below.	15.
	(b) Virgin pre-paid Goods; or				15.1
	(c) Boost pre-paid Goods;		9.	Sale Or Return Policy	15.2
	then these Goods are also subject to the terms and conditions of the respective supply company, as attached (where applicable). Acceptance of the Agent's terms and conditions shall constitute acceptance of the Optus, Virgin or Boost terms and conditions. If there are any inconsistencies between the terms and conditions herein and the Optus, Virgin or Boost terms and conditions then the terms and conditions contained in this document shall prevail.		9.1	A Sale Or Return policy applies only to "pre-paid" Goods purchased from the Agent, where the Agent will accept the return of the Goods for credit, provided that:	15.3
3.	Price And Payment		9.2	(a) the Agent has agreed in writing to accept the return of the Goods; and	15.4
3.1	At the Agent's sole discretion the Price shall be either;		9.3	(b) the Goods are returned at the Customer's cost within nine (9) months of the delivery date; and	15.3
	(a) as indicated on invoices provided by the Agent to the Customer in respect of Goods supplied; or			(c) the Goods must be returned with an authorised "Stock Returns" form supplied by the Agent; and	15.4
	(b) the Agent's current Price, at the date of delivery of the Goods, according to the Agent's current Price list.		9.2	(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.	15.4
3.2	Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.		9.2	Canon, Amicore, or any other non pre-paid Goods sold by the Agent will not be accepted for return.	15.4
3.3	At the Agent's sole discretion:		9.3	Goods specifically advertised or sold on a "firm sale" basis will not be accepted for return.	15.4
	(a) payment shall be due before delivery of the Goods, or				15.3
	(b) payment for approved Customer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.		10.	Warranty	15.4
3.4	Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 1.5% of the Price), or by direct credit, or by direct debit, or by any other method as agreed to between the Customer and the Agent.		10.1	For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.	15.4
3.5	GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.				15.4
4.	Delivery Of Goods		11.	The Commonwealth Trade Practices Act 1974 and Fair Trading Acts	15.5
4.1	Delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Agent).		11.1	Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.	15.5
4.2	At the Agent's sole discretion the costs of delivery are;				15.5
	(a) included in the Price, or		12.	Default & Consequences Of Default	16.
	(b) in addition to the Price, or		12.1	Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.	16.1
	(c) for the Customer's account.		12.2	If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.	16.2
4.3	The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.		12.3	Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent exercised its rights under this clause.	16.3
4.4	The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.		12.4	If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.	16.5
4.5	The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Goods (or any of them) promptly or at all.		12.5	Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:	16.6
5.	Risk			(a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Customer will be unable to meet its payments as they fall due; or	16.7
5.1	If the Agent retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.			(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	16.8
5.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.			(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.	16.9
6.	Title				16.9
6.1	It is the intention of the Agent and agreed by the Customer that ownership of the Goods shall not pass until:				16.9
	(a) the Customer has paid all amounts owing for the particular Goods, and				16.9
	(b) the Customer has met all other obligations due by the Customer to the Agent in respect of all contracts between the Agent and the Customer.				16.9
6.2	Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Agent's ownership or rights in respect of the Goods shall continue.				16.9
6.3	It is further agreed that:				16.9
	(a) where practicable the Goods shall be kept separate and identifiable until the Agent shall have received payment and all other obligations of the Customer are met; and				16.9
	(b) until such time as ownership of the Goods shall pass from the Agent to the Customer the Agent may give notice in writing to the Customer to return the Goods or				16.9

Terms and Conditions (For supply of Optus and Boost PrePaid Mobile by Jenlist Pty Ltd)

To be read in conjunction with the Terms & Conditions of Trade as set out by Jenlist Pty Ltd T/A Jenlist Distributors

Introduction

1.1 **Background:** Jenlist Pty Ltd (ABN 003 619 789) (**Jenlist**) has been appointed by PrePaid Services Pty Limited (ABN 83 094 689 219) (**PrePaid Services**) as an Agent for Optus Mobile Pty Limited (ABN 65 054 365 696) and Optus Internet Pty Limited (ABN 14 083 164 532) (together **Optus**) to facilitate the sale and promotion of certain pre-paid telecommunications products and services. On behalf of Optus and PrePaid Services, Jenlist appoints the Retailer as a Sub- agent of Optus to carry out the promotion and sales of Products for Optus on the terms of this Agreement.

1.2 **Acceptance:** By placing the first order with Jenlist for Products, the Retailer will be deemed to have accepted the appointment as Optus' agent and agree to comply with the terms of this Agreement and any direction by PrePaid Services and / or PrePaid Services approved communication from Jenlist. These terms and conditions are directly enforceable against the Retailer by PrePaid Services (for the benefit of Optus).

1.3 **Term of Agreement:** This Agreement commences on the date it is signed by both parties (or the date on which the Retailer is deemed to have accepted these terms under **clause 1.2**) and continues for the term specified in the Details unless it is terminated earlier in accordance with its terms.

1.4 **Definitions:**

Products means a product of the following type : Prepaid Mobile Start Up Kits (Containing a SIM card and pre-paid airtime), Prepaid Mobile Handset Packages (Mobile handset packages bundled with Prepaid Mobile start Up kits), Prepaid Mobile Recharge Vouchers (vouchers containing further pre-paid mobile airtime), Prepaid Internet Products, Prepaid Services Calling Card Products.

Locations Retail locations as approved by Jenlist and PrePaid services

Margin means the commission payable to the retailer expressed as a percentage of the sale price, as notified by Jenlist from time to time

Sale Price means the price for a Product as specified by Optus

2. Appointment and Role

2.1 **Appointment:** Jenlist as an agent of PrePaid Services and Optus appoints the Retailer as a Sub- agent of Optus, on the terms of this Agreement, for the purpose of selling Products to customers at approved Locations

2.2 **Role:** All sales of Products are directly between Optus and the customer. The Retailer must not purport to enter into any contractual relationship with a customer for the sale of Products or alter any of the terms and conditions on which Optus supplies the Products to customers.

2.3 **Sub-Agency:** The Retailer must not appoint any agents of Optus or supply Products to any person for the purposes of re-supply.

3. Exclusivity

If the agreement states that exclusivity applies, the Retailer must not:

- (a) purchase from a competitor of Optus for the purpose of resupply; or
- (b) distribute, promote or provide agency services the same as or similar to the agency services provided under this Agreement for a competitor of Optus in relation to,

any pre-paid mobile telecommunications products or services, pre-paid internet service or prepaid calling card products or services.

4. Retailer's Obligations

4.1 **Conditions of Supply:** The Retailer must:

- (a) use its best efforts to promote the sale of the Products to customers at the Locations including by ensuring that (at all times and at each Location) the Products are displayed prominently and in adequate stock;
- (b) use the point of sale material provided by Jenlist from time to time;
- (c) not use any advertising or promotional material in connection with the sale of the Products, other than the material provided or approved by Jenlist
- (d) not transfer Products between Locations, unless otherwise agreed by Jenlist;
- (e) supply Products only for use in connection with the Optus Digital Mobile Network in Australia and/or OptusNet Dial-Up Internet Service as relevant; and
- (f) ensure Products sold to customers:
 - (i) are in the same packaging and condition as they are delivered by Jenlist;
 - (ii) have an expiry date more than 2 months away; and
 - (iii) are not separated or unbundled components of Products delivered by Jenlist to the Retailer.

4.2 **General Obligations:** The Retailer:

- (a) must not make any representations or give any warranties in relation to the Products other than those given by Jenlist from time to time;
- (b) must perform its obligations under this Agreement in accordance with:
 - (i) any directions issued by Jenlist, PrePaid Services or Optus from time to time;
 - (ii) any Optus , PrePaid Services or Jenlist operational procedures that the Retailer has been notified of;
- (c) If requested by Jenlist provide to Jenlist within 3 days of the end of every calendar month a statement showing any information reasonably required by Jenlist, including the number and type of Products which have been acquired by customers during that calendar month, and the Sales Price paid by those customers for each Product

4.3 **Compliance with Legal and Statutory Obligations:** The Retailer:

- (a) must comply with all applicable laws, regulations, standards and codes of conduct;
- (b) must not represent or pass-off that it is Optus or PrePaid Services, or is authorised to act on behalf of Optus or PrePaid Services or perform any activities in relation to the Products except as set out in this Agreement; and
- (c) must work together with Jenlist to prevent fraud in connection with the Products and notify Jenlist immediately on becoming aware of any such fraud.

4.4 **Pre-paid identity checks:** Without limiting the Retailer's obligations under **clause 5.3**, the Retailer must:

- (a) obtain copies of identification required by the ACMA's Telecommunications (Service Provider - Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000 including the identification specified in the Attachment to this Agreement; and
- (b) supply copies of that identification along with a completed Prepaid Registration form to Optus on a weekly basis (or at such other times as may be agreed between the parties from time to time) and in accordance with Optus procedures as notified by Jenlist.
- (c) Copies of identification and completed Prepaid Registration forms are to be returned to :

Campaign Management Team at
Reply Paid 1111,
PO Box 42,
North Melbourne, VIC 3051

5. Displays and Point of Sale Material

5.1 **Point of sale and advertising material:** If Jenlist provides the Retailer with displays, fittings and point of sale material for the products, all such materials:

- (a) remain the property of PrePaid Services or Optus (as the case may be);
- (b) must be used for the purposes of display and promotion of Products; and
- (c) must be prominently displayed in accordance with the directions of Jenlist from time to time. Sale Price and Price Protection.

5.2 **Approval:** The Retailer must ensure that any point of sale and advertising material used at a Location for the Products that has not been supplied by PrePaid Services is approved in writing by PrePaid Services.

6. Sale Price

6.1 **Commission:** The Retailer:

- (a) may retain by way of commission an amount equal to the Margin of the Sale Price of Products sold by the Retailer to customers at the Locations; and
- (b) must remit to Jenlist an up-front deposit for the Products delivered to the Retailer under this Agreement calculated in accordance with the formula in **clause 6.2**.

6.2 **Remittance Formula:** For all Products delivered to the Retailer, the Retailer must remit to Jenlist an amount (**Remittance**) calculated in accordance with the following formula, as adjusted in accordance with this **clause**

Remittance =
Sale Price - (Sale Price x Margin).

6.3 **Sale Price and Price Protection:**

- (a) The Retailer acknowledges and agrees that the sales of the Products are directly between Optus and the customer and, accordingly, Optus (as notified to the Retailer by Jenlist) is free to set the Sale Price of the Products at any time as it sees fit.
- (b) If Optus:

- (i) reduces the Sale Price, the Retailer may make a price protection claim in accordance with the Return and Price Protection Policy and the Jenlist will refund to the Retailer the amounts determined in accordance with the Return and Price Protection Policy; and
- (ii) increases the Sale Price, the Retailer will be liable to pay Jenlist an additional amount calculated in accordance with the Return and Price Protection Policy.

7. Confidentiality

7.1 *Definition: Confidential Information* means:

- (a) all information of PrePaid Services or Optus (jointly and severally the **Owner**) that is treated by them as being confidential; and
- (b) disclosed by the Owner (whether in writing or in any other form) to the Retailer (or of which the Retailer first becomes aware) in connection with this Agreement.

7.2 *Restrictions on disclosure:* The Retailer must keep the Confidential Information confidential and not disclose it to a third party except:

- (a) to employees that have a need to know in connection with this Agreement (and only to the extent that each has a need to know); or
- (b) to the extent, and to the persons, required to comply with any legal or regulatory obligations or the listing rules of any stock exchange.

7.3 The Retailer must:

- (a) only use the Owner's Confidential Information to the extent necessary to perform its obligations under this Agreement;
- (b) establish and maintain effective security measures to safeguard the Owner's Confidential Information from unauthorised access or use;
- (c) immediately take all steps to prevent or stop, and comply with any direction issued by the Owner from time to time regarding, a suspected or actual breach; and
- (d) immediately notify the Owner of any suspected or actual unauthorised use, copying or disclosure of the Owner's Confidential Information.
- (e) not use any Optus or PrePaid Services trade marks and logos without prior written approval of Optus or PrePaid Services respectively.
- (f) only apply the Optus and PrePaid Services Trade Marks in a manner and form approved by Optus or PrePaid Services, or both, in writing from time to time (including the use of Optus and PrePaid Services Trade Marks in connection or association with any other trade marks, logos, names, trading styles or get up
- (g) comply with any quality or other standards notified by Optus or PrePaid Services or both to retailer in relation to the use of the Optus and PrePaid Services Trade Marks
- (i) not alter or deface the Optus and PrePaid Services Trade Marks in any manner.

7.4 *Effect of Expiration or Termination:* On expiration or termination of this Agreement, the Retailer agrees that:

- (a) it must continue to keep confidential in accordance with this **clause 9** the Owner's Confidential Information; and
- (b) its rights to use and disclose the Owner's Confidential Information cease other than in relation to information the Retailer is required to disclose in order to comply with any legal, regulatory, or stock exchange reporting obligations.

8. Privacy

8.1 *Definition: Personal Information* has the meaning in the *Privacy Act 1988* (Cth), and in this **clause**, refers to Personal Information collected by the Retailer and/or its personnel or disclosed to the Retailer and/or its personnel under the terms of this Agreement

8.2 *Compliance with privacy legislation:* In addition to complying with its duties under **clause 9**, when performing its obligations under this Agreement, the Retailer must ensure that when it or its personnel collects, uses, discloses, transfers, stores or otherwise handles Personal Information which relates to a Customer or any other person, it will comply with all applicable laws, rules and regulations including, without limitation:

- (a) the *Privacy Act 1988* (Cth) and the National Privacy Principles contained in Schedule 3 of that Act, regardless of whether the Retailer is a small business operator for the purposes of that Act, or would otherwise be exempted from complying with that Act; and
- (b) Part 13 of the *Telecommunications Act 1997* (Cth).

8.3 *Privacy notification:* At the time the Retailer and/or its personnel collects Personal Information from a person on behalf of Optus (for example, when a person is completing a Service Application), the Retailer and/or its personnel must direct that person to the relevant printed explanation of why Optus collects Personal Information, to whom Optus may disclose Personal Information, the consequences if Personal

Information is not provided and that access to the Personal Information which Optus holds about them may be available from Optus.

8.4 *Use and disclosure:* Without limiting **clause 10.2**, the Retailer must and the Retailer must ensure that its personnel must:

- (a) not use the Personal Information collected from a Customer or from Optus except in accordance with **clause 9** and for purposes authorised under this Agreement;
- (b) not disclose Personal Information provided to the Retailer and/or its personnel to any person other than Optus without the written authority of Optus or as required by law;
- (c) take all reasonable steps to protect any Personal Information provided to the Retailer and/or its personnel under this Agreement from misuse and loss and from unauthorised access, modification or disclosure;
- (d) comply with any reasonable requests or directions of Optus concerning the security, use and disclosure of Personal Information collected by the Retailer and/or its personnel under this Agreement, or the rights of individuals to access and correct such Personal Information (for example, this may be addressed in bulletins from Optus to the Retailer);
- (e) comply with any reasonable requests or directions of Optus concerning the current Optus privacy policy;
- (f) notify Optus as soon as reasonably practicable after the Retailer becomes aware that it may be required by law (including under the *Privacy Act 1988*) to disclose any Personal Information collected by or provided to the Retailer and/or its personnel under this Agreement (for example, if an access request is received under the *Privacy Act 1988*, Optus must be notified);
- (g) notify Optus immediately after the Retailer becomes aware of a breach of this **clause**; and
- (h) on the termination of this Agreement for any reason, destroy or otherwise deal with any Personal Information provided to the Retailer and/or its personnel under this Agreement in accordance with the reasonable directions of Optus.

8.5 *Personal Information as Confidential Information:* the Retailer acknowledges that Personal Information may also be Confidential Information and that the Retailer must only use or disclose such Personal Information in accordance with **clause 9** of this Agreement.

8.6 **Survival: Clause 10** survives the termination of this Agreement.

9. Record Keeping and Inspection

9.1 *Complete records:* The Retailer must maintain complete and accurate records of and all supporting documentation relating to this Agreement and the sale of the Products.

9.2 *Access:* The Retailer agrees to allow PrePaid Services (and its authorised representatives) to enter its business premises and each Location during business hours without notice and at other times after giving 48 hours notice for the sole purpose of ensuring that the Retailer has complied, is complying and will be able to continue to comply with its obligations under this Agreement.

10. Liability

10.1 *Risk and Title:* Title in a Product remains with Optus until such time as the Product is sold by the Retailer to the customer when title shall pass directly from Optus to the customer. Risk in the Products passes to the Retailer on the delivery of the Products to the Retailer.

10.2 *Indemnity:* The Retailer indemnifies Jenlist, PrePaid Services and Optus against any liability, losses, damages, expenses and costs (on a solicitor own client basis) suffered or incurred by PrePaid Services or Optus as a result of:

- (a) a breach of this Agreement by the Retailer;
- (b) any act, omission or misrepresentation of the Retailer relating to the sale or promotion of the Products; and
- (c) any fraudulent use of Products (including theft) by any employees, sub-agents or contractors of the Retailer.

10.3 *Non-Excludable Terms:* This Agreement does not exclude or modify any condition or warranty implied into this Agreement or any liability imposed on Optus or PrePaid Services by any law (including by the *Trade Practices Act 1974*) if to do so would contravene that law or make any part of this clause void or unenforceable.

10.4 *Warranties:* Each of PrePaid Services and Optus exclude all conditions and warranties implied into this Agreement.

10.5 *Liability:* PrePaid Services' and Optus' liability for any claim or proceeding in connection with this Agreement (whether that liability arises from contract, tort (including negligence) or statute) will be limited, in the case of services, to supplying the services again and in the case of goods, to providing equivalent goods or replacing or having the goods repaired.

10.6 *Consequential Loss:* Each of Optus and PrePaid Services excludes any liability to the Retailer for any special or consequential loss including but not limited to loss of opportunity, lost revenue and lost profits arising out of or in connection with this Agreement or the sale of the Products.